

No. 83-1799

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

BAY HEAD IMPROVEMENT ASSOCIATION,

*Petitioner,*

v.

VIRGINIA MATTHEWS and STANLEY VAN NESS,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF NEW JERSEY

REPLY BRIEF IN SUPPORT OF PETITION FOR  
CERTIORARI

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June 19, 1984

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REPLY BRIEF IN SUPPORT OF  
THE PETITION FOR CERTIORARI

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This reply brief, submitted on behalf of the Bay Head Improvement Association, addresses an argument raised for the first time in Respondents' Brief in Opposition.\* The respondent suggests, but does not directly assert, that the federal constitutional issues

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\*The identification of parties and entities required by Sup. Ct. R.28.1 is set forth at page i of the Petition.

presented in the petition were not submitted to the courts below. In this, he is mistaken. It is beyond dispute that the issues were presented and addressed in accordance with governing state rules of procedure, in a manner no less appropriate than was the case in Street v. New York, 394 U.S. 576, 584 (1969), to which the Public Advocate refers:

"No particular form of words or phrases is essential, but only that the claim ... and the ground therefor be brought to the attention of the State Court with fair precision and in due time."

quoting Bryant v. Zimmerman, 278 U.S. 63, 67 (1928).

The Bay Head Improvement Association, in its answer to the complaint, asserted each of the claims raised here arising under the Fifth and Four-

teenth Amendments as separate affirmative defenses, (PA 372-392\*). The Appellate Division of the Superior Court of New Jersey, in affirming the order of summary judgment entered by the trial court, expressly adverted to "the fundamental rule of law embodied in our Constitution that private property may not be taken for public use without just compensation, PA 3 (Per Curiam Opinion dated June 8, 1982 p.3.). The respondents sought certification from that order in the Supreme Court of New Jersey, inter alia on the question, whether "constitutional taking provisions and/or the separation of powers doctrine foreclose such a right [of access]" (Respondents' Petition for Certification p.10). The

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\*References are to the Plaintiff's Appendix filed in the Supreme Court of New Jersey.

Supreme Court of New Jersey granted the petition for certification on this question (Order dated November 9, 1982). Finally, the Association fully briefed and argued these questions in the New Jersey Supreme Court (Brief of Bay Head Improvement Association on Appeal and in Opposition to Petition for Certification, pp. 14-20). No other procedure for raising these issues is required under New Jersey state rules, Weisberg v. Koprowski, 17 N.J. 363, 380, 111 A.2d 481, 490 (1955); State v. Czachor, 82 N.J. 392, 402, 413 A.2d 593, 598 (1980); N.J. Ct.R. 2:12-2 - 2:12-7.

The remainder of Respondents' Brief in Opposition addresses portions and quotes from the decision below which are not in issue in this case

-- namely the right of owners of property  
who are not members of the Association.

Respectfully submitted,

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